

## Federal Property Management Regulations

## § 101-47.4909

not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

### § 101-47.4908 Excess profits covenant.

#### EXCESS PROFITS COVENANT FOR NEGOTIATED SALES TO PUBLIC BODIES

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property;

(2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A description of each portion of the property that has been resold;

(2) The sale price of each such resold portion;

(3) The identity of each purchaser;

(4) The proposed land use; and

(5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

[51 FR 23760, July 1, 1986]

### § 101-47.4909 Highest and best use.

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

Industrial .....	_____
Single family residential .....	_____
Multiple family residential .....	_____
Commercial/retail .....	_____
Warehouse .....	_____
Agriculture .....	_____
Institutional or public use .....	_____

Other (specify) \_\_\_\_\_

Not zoned .....

Zoning proceeding pending Federal disposal .....

Category proposed \_\_\_\_\_

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services,

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access, environmental and historical aspects, and other significant factors)

(3) Area/neighborhood uses (check one or more as appropriate).

Single family residential .....  
Multiple family residential .....  
Industrial .....  
Office .....  
Retail or commercial .....  
Farmland .....  
Recreational/park area .....  
Other (specify) \_\_\_\_\_

(4) Existing neighboring improvements (check one or more as appropriate).

Deteriorating .....  
Stable .....  
Some recent development .....  
Significant recent development .....

Vicinity improvements:

\_\_\_Dense \_\_\_Moderate \_\_\_Sparse \_\_\_None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

Severe slope or soil instability .....  
Road access .....  
Access to sanitary sewers or storm sewers .....  
Access to water supply .....  
Location within or near floodplain .....  
Wetlands .....  
Tidelands .....  
Irregular shape .....  
Present lease agreement or other possessory non-Federal interest .....  
Historic, archeological or cultural .....  
Contamination or other hazards .....

Other (specify) \_\_\_\_\_

Comments on adverse conditions \_\_\_\_\_

(6) Former Government uses (check one or more as appropriate).

Office .....  
Industrial .....  
Warehouse or storage .....  
Residential .....  
Retail/commercial .....  
Agricultural .....

Specify other uses below, such as airport, health, education, recreation and special military facilities—

(c) Determination of highest and best use (check one or more as appropriate).

Single family residential .....  
Multiple family residential .....  
Industrial .....  
Office .....  
Retail or commercial .....  
Agricultural .....  
Warehouse/storage .....  
Transportation .....  
Historic monument .....  
Recreation/park .....  
Health .....  
Education or related institutional use .....  
Airport .....  
Wildlife Conservation .....  
Public utility .....

Other (include general public or governmental).  
\_\_\_\_\_

Remarks: \_\_\_\_\_

(d) Are significant costs required to make property conform to highest and best use (i.e. demolition of existing improvements, relocation of existing improvements, etc.)?

Remarks: \_\_\_\_\_

(e) Can a knowledgeable cost estimate be given in reference to paragraph d above? (Enter figure).

Yes (\$\_\_\_\_\_) .....  
No .....

(f) Is the property located adjacent to or inside the boundaries of a State park, forest or recreational area?

Yes .....  
No .....

Remarks \_\_\_\_\_

[49 FR 37091, Sept. 21, 1984]

**§ 101-47.4910 Field offices of Department of Health, Education, and Welfare.**

NOTE: The illustrations in §101-47.4910 are filed as part of the original document and do not appear in the FEDERAL REGISTER or the Code of Federal Regulations.

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